

Law of the Sea Arbitration

Class 8

Basel Winter Arbitration School
Wednesday, 4 February 2026

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The importance of the ocean... *... and the potential for disputes*

The importance of the ocean

70% of the surface of the Earth is water



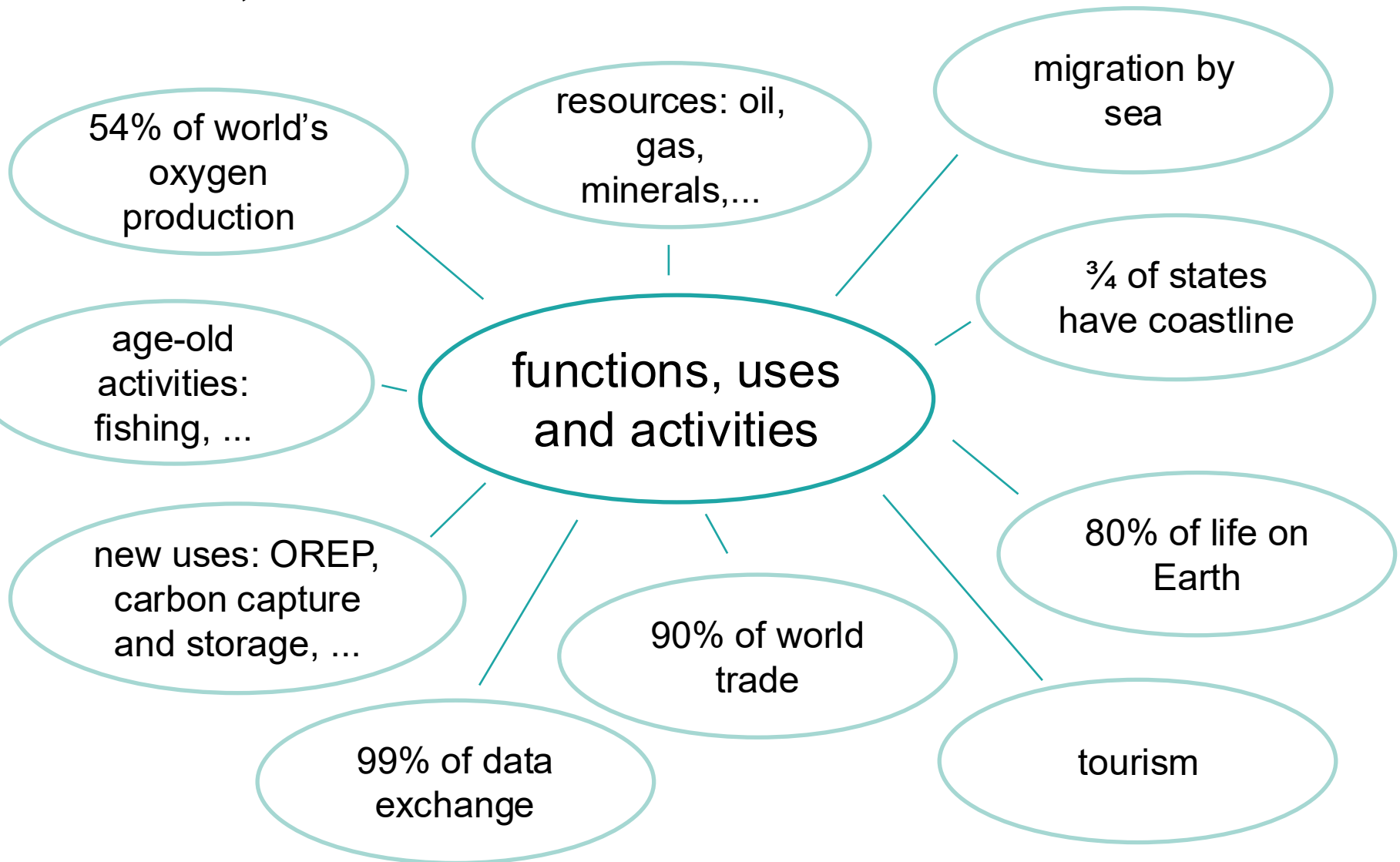
The importance of the ocean

Oceans are important for all states!



The importance of the ocean

Functions, uses and activities



The importance of the ocean

Even for land-locked states



The importance of the ocean

Even for land-locked states



The importance of the ocean

Considerable potential for disputes



Law governing the ocean

UNCLOS as the “Constitution for the Ocean”

Law governing the ocean

Two bodies of law stand out

(public) law of the sea

governs relations
between states

law of the sea arbitration

(private) maritime law

governs relations
between privates

maritime arbitration



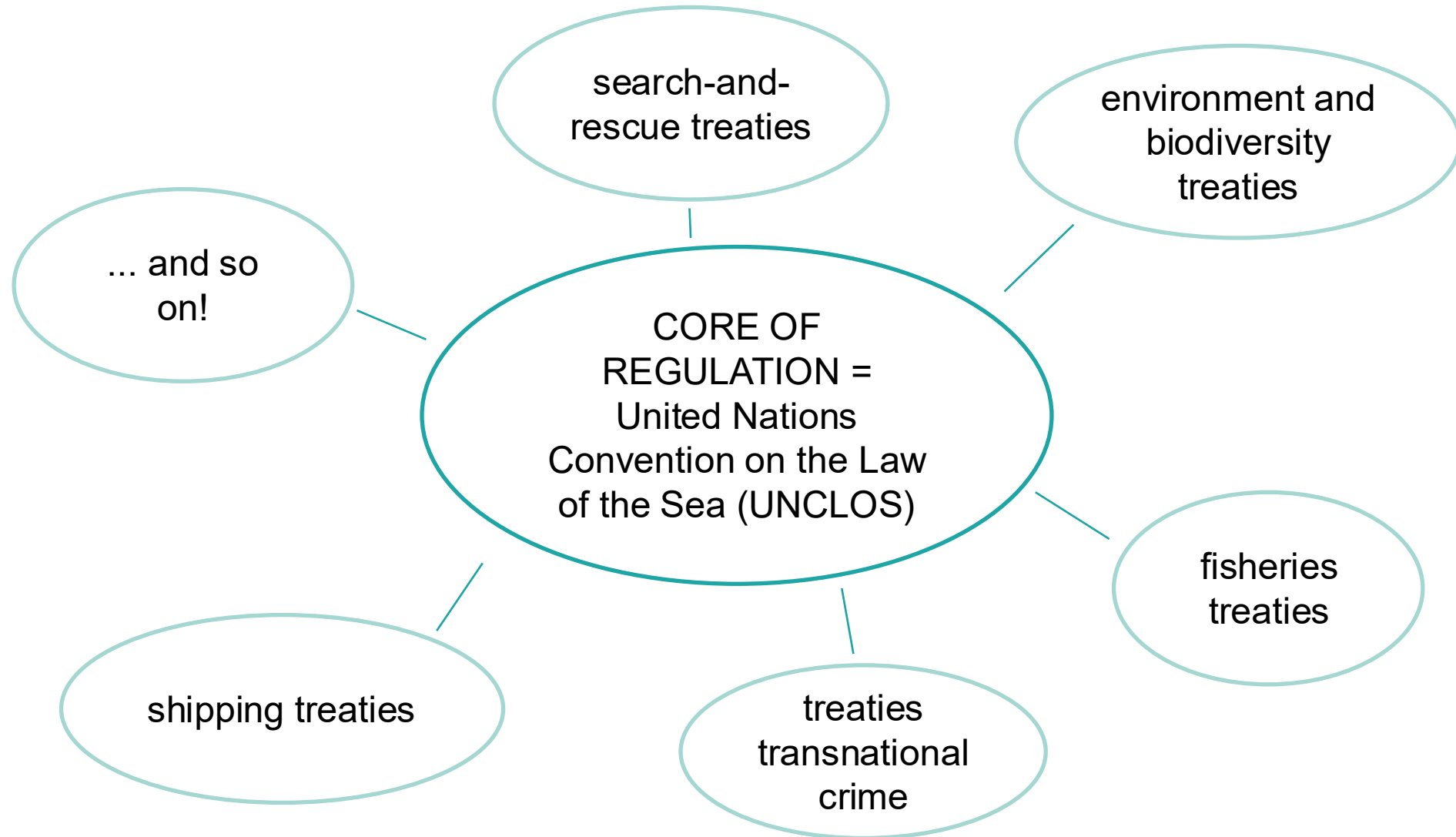
inter-state
arbitration



private
arbitration

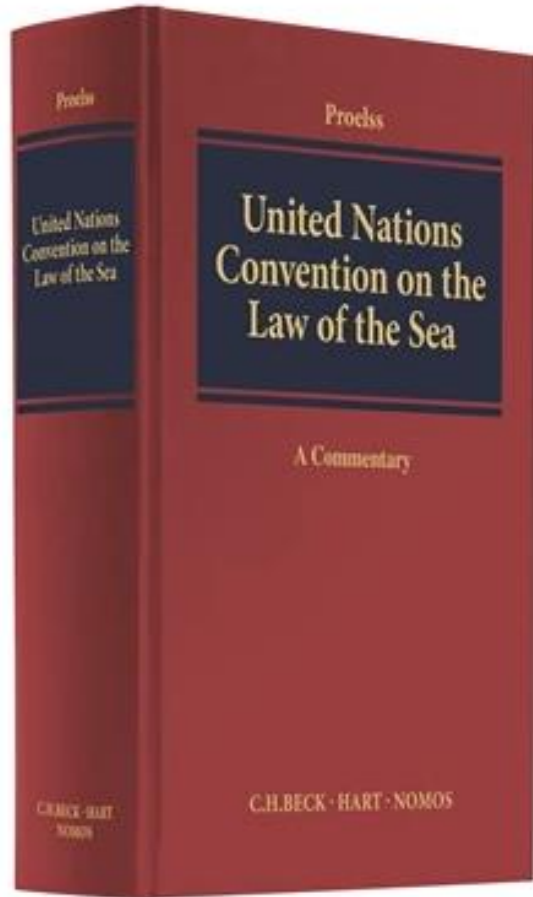
Law governing the ocean

Our focus is on the (public) law of the sea



Law governing the ocean

UNCLOS as the “Constitution for the Ocean”



320 provisions
+ 9 Annexes

- adopted in 1982
- entered into force in 1994
- 171 parties (States + EU)

Law governing the ocean

UNCLOS as the “Constitution for the Ocean”

PREAMBLE

The States Parties to this Convention,

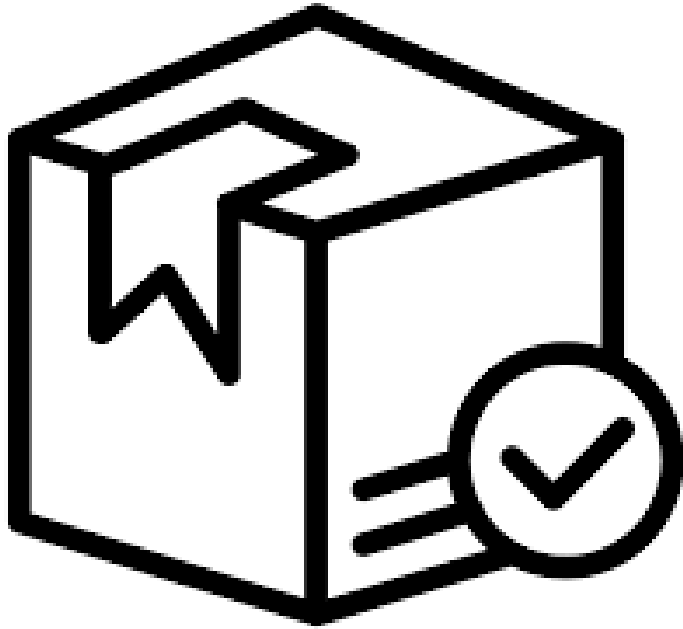
Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

‘A Constitution for the Oceans’

**Remarks by Tommy T.B. Koh, of Singapore
President of the Third United Nations Conference on the Law of the Sea**

Law governing the ocean

UNCLOS as a “package deal”



Goal pursued in negotiations

- one single treaty
- integral whole
- universal support

Resulted in “package deal”

- balancing of interests
- giving and taking
- “constructive ambiguity”

Not all states like all provisions!

DSM as “the cement which should hold
the whole structure together”
(Alan Boyle)

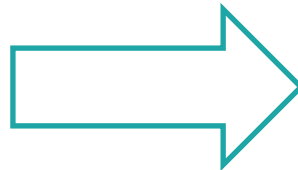
Law governing the ocean

Compulsory dispute settlement mechanism of UNCLOS

“(...) unlike most other treaties under which there are no mandatory provisions on the settlement of disputes, a very unique feature of the new Convention [UNCLOS] is that it does contain mandatory provisions on the settlement of disputes.”

Tommy Koh, ‘The Third United Nations Conference on the Law of the Sea: What Was Accomplished?’ 1983) 46(2) Law and Contemporary Problems 5, 7.

by becoming an
UNCLOS party



advance consent to
arbitration or
adjudication

Four different fora for UNCLOS disputes

The “cafeteria approach”

Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”

Art. 287 UNCLOS



ITLOS

Four different fora for UNCLOS disputes

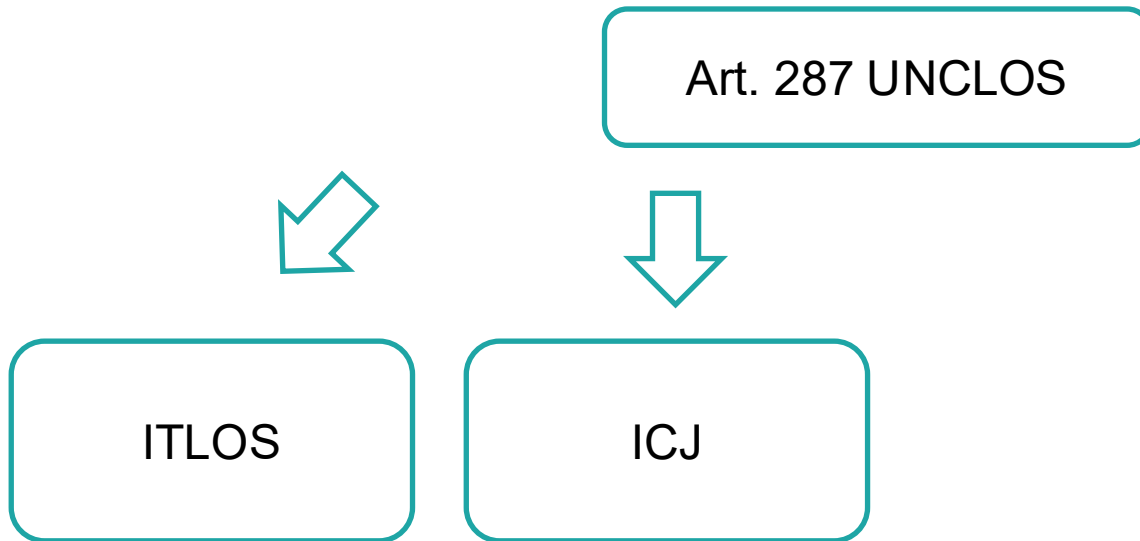
International Tribunal for the Law of the Sea (ITLOS)



- permanent international tribunal
- 21 elected judges
- seat in Hamburg, DE

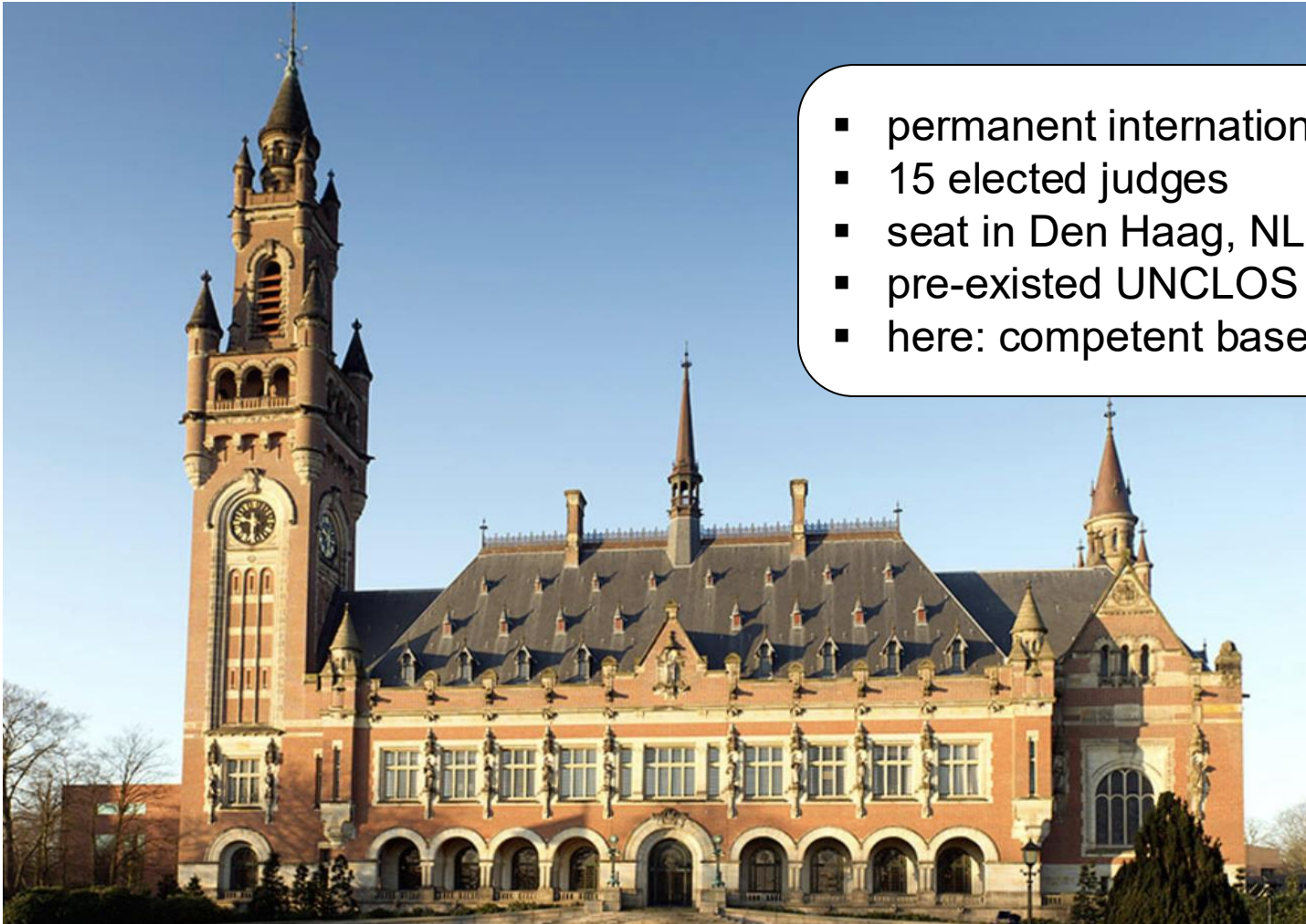
Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”



Four different fora for UNCLOS disputes

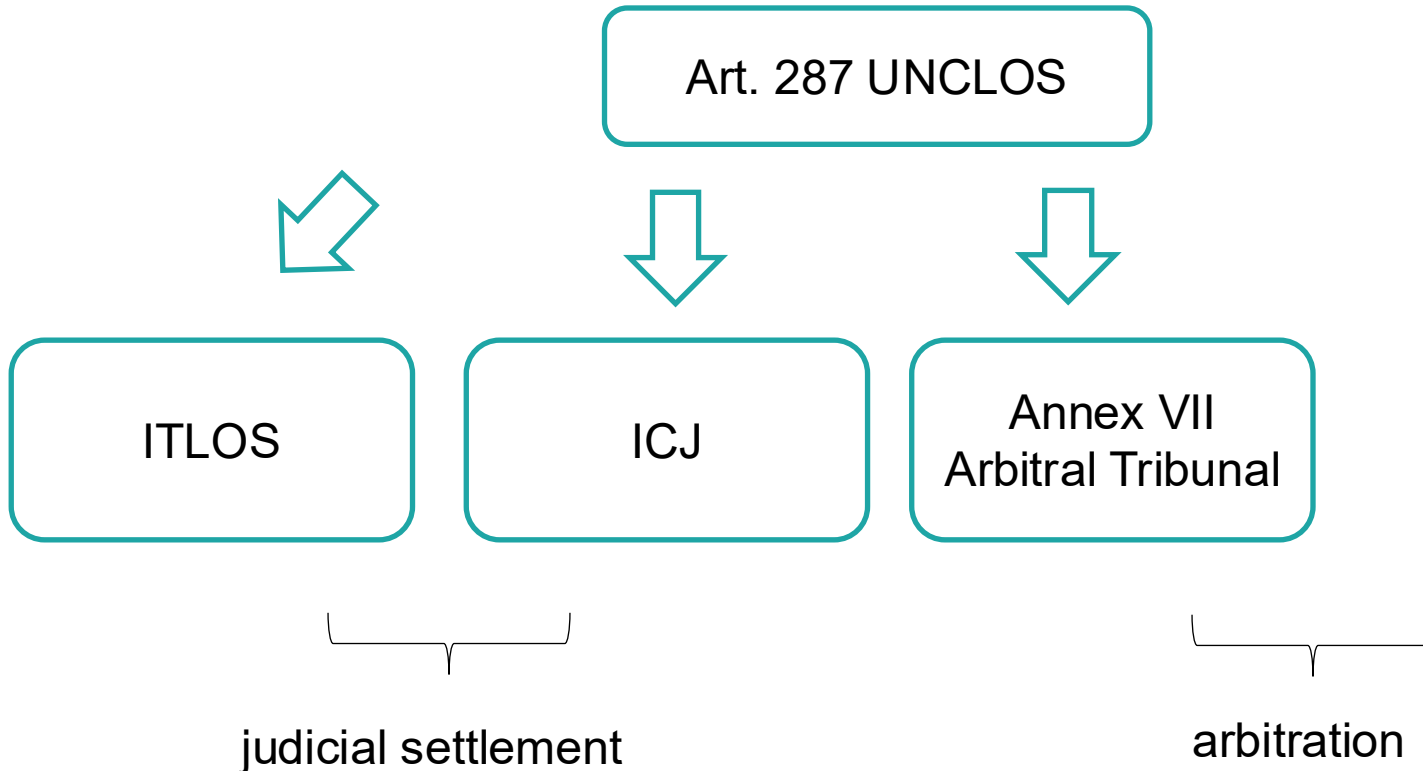
International Court of Justice (ICJ)



- permanent international court
- 15 elected judges
- seat in Den Haag, NL
- pre-existed UNCLOS
- here: competent based on UNCLOS

Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”



The “cafeteria approach”

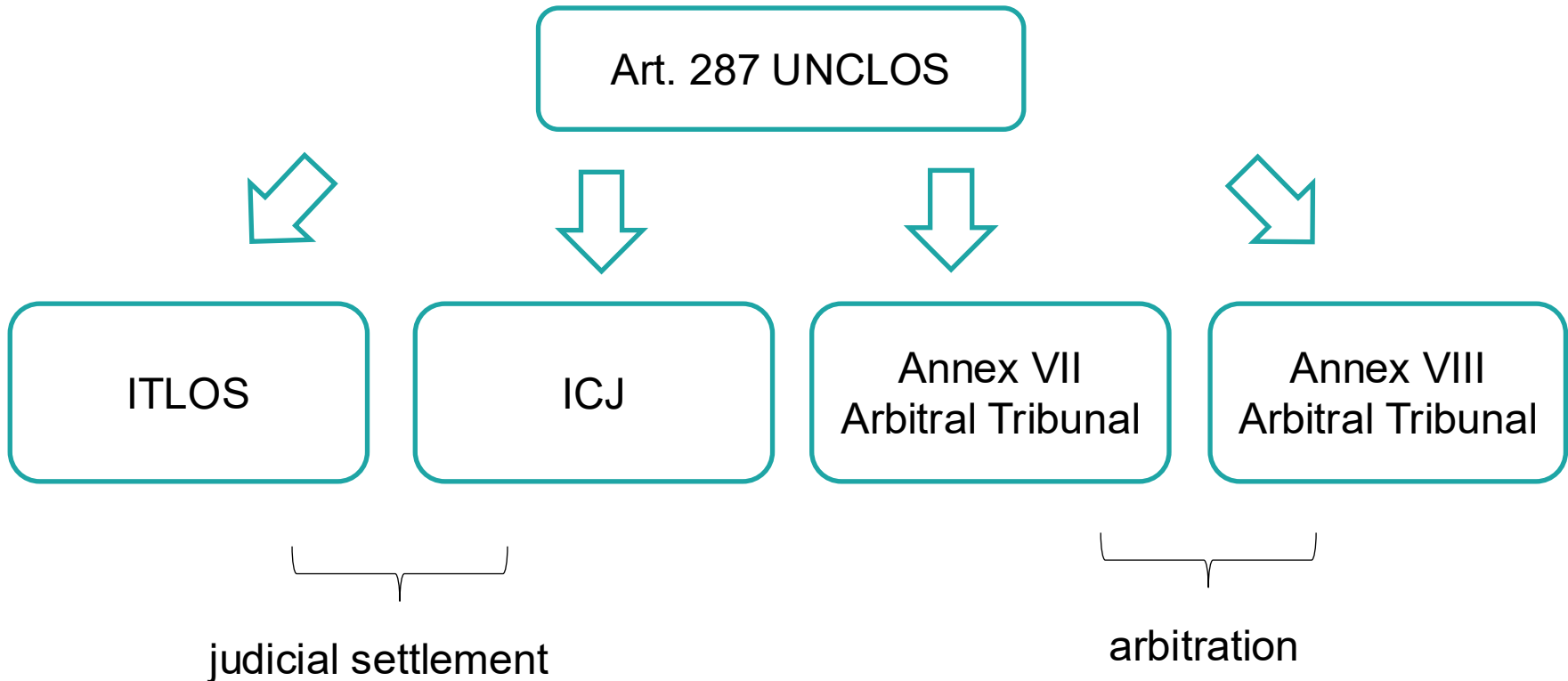
Annex VII Arbitral Tribunals

- Annex VII arbitration = ad hoc
- but 14 out of 15 cases administered by PCA
- see later



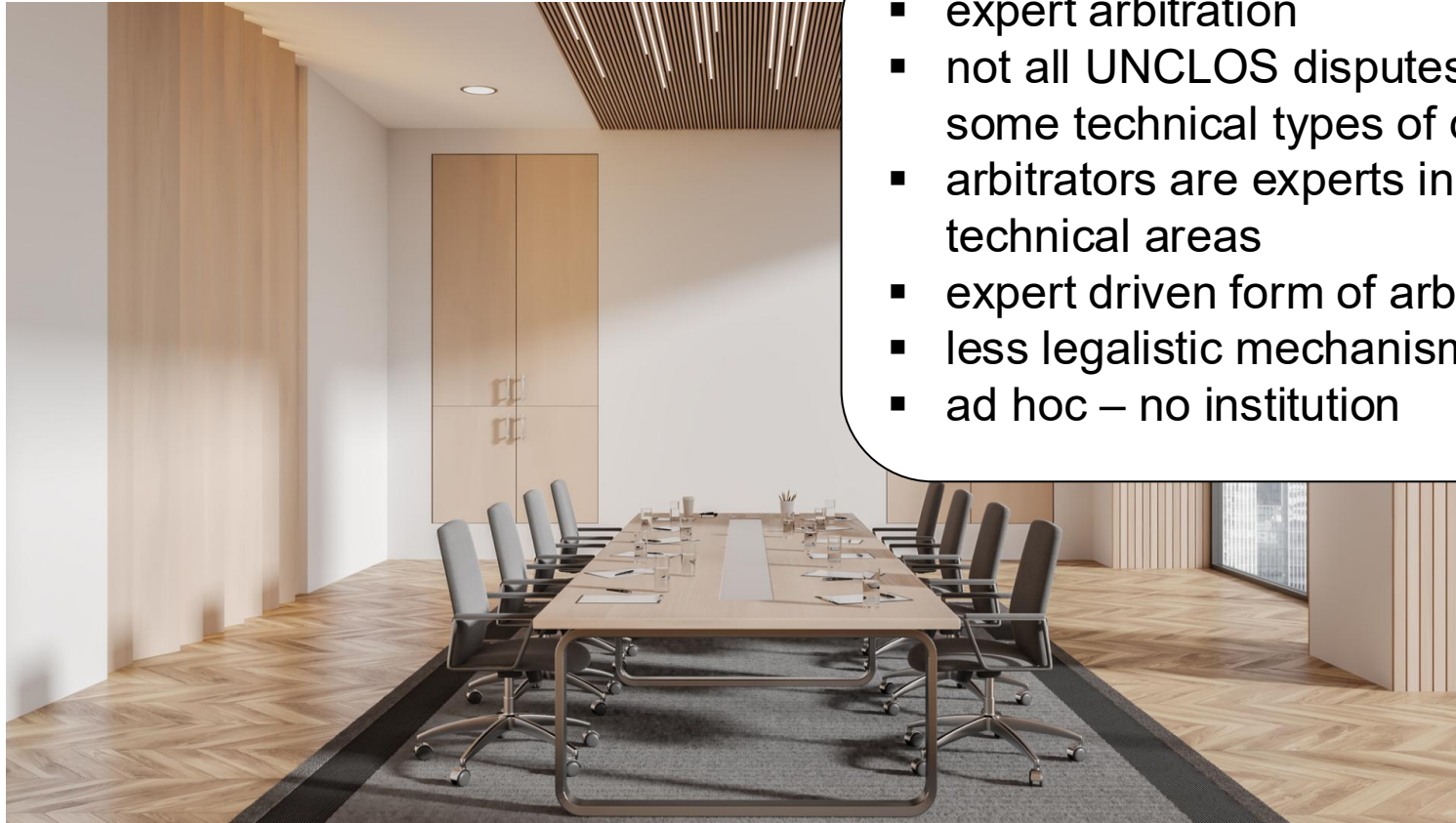
Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”



The “cafeteria approach”

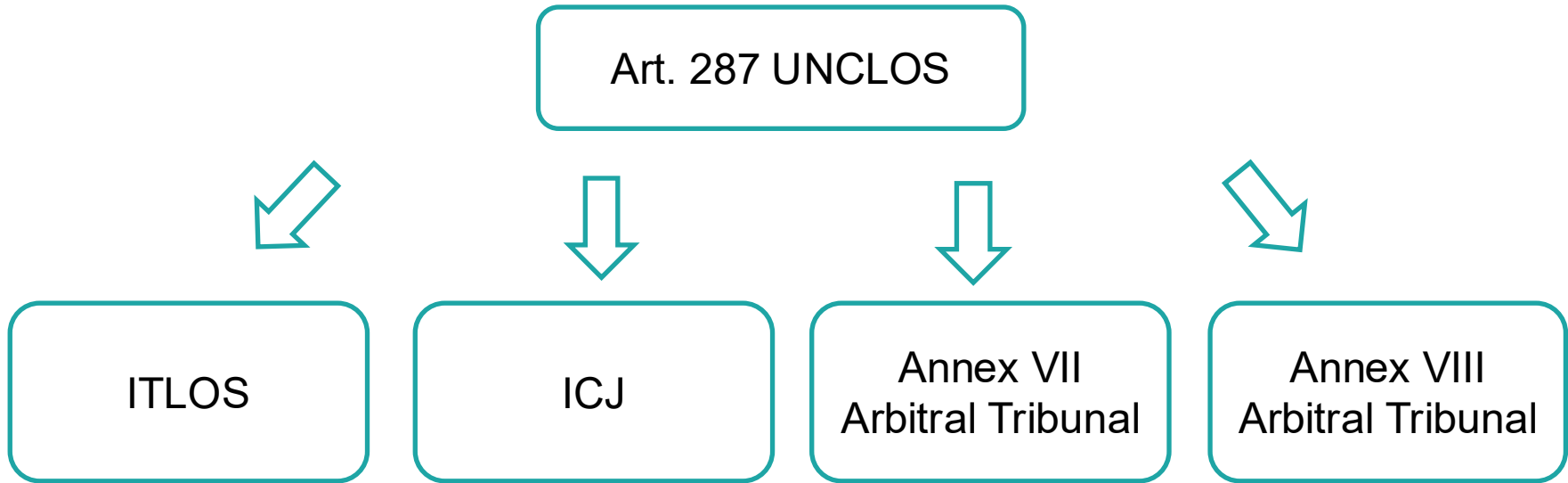
Annex VIII Arbitral Tribunals



- expert arbitration
- not all UNCLOS disputes, only some technical types of disputes
- arbitrators are experts in these technical areas
- expert driven form of arbitration
- less legalistic mechanism
- ad hoc – no institution

Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”

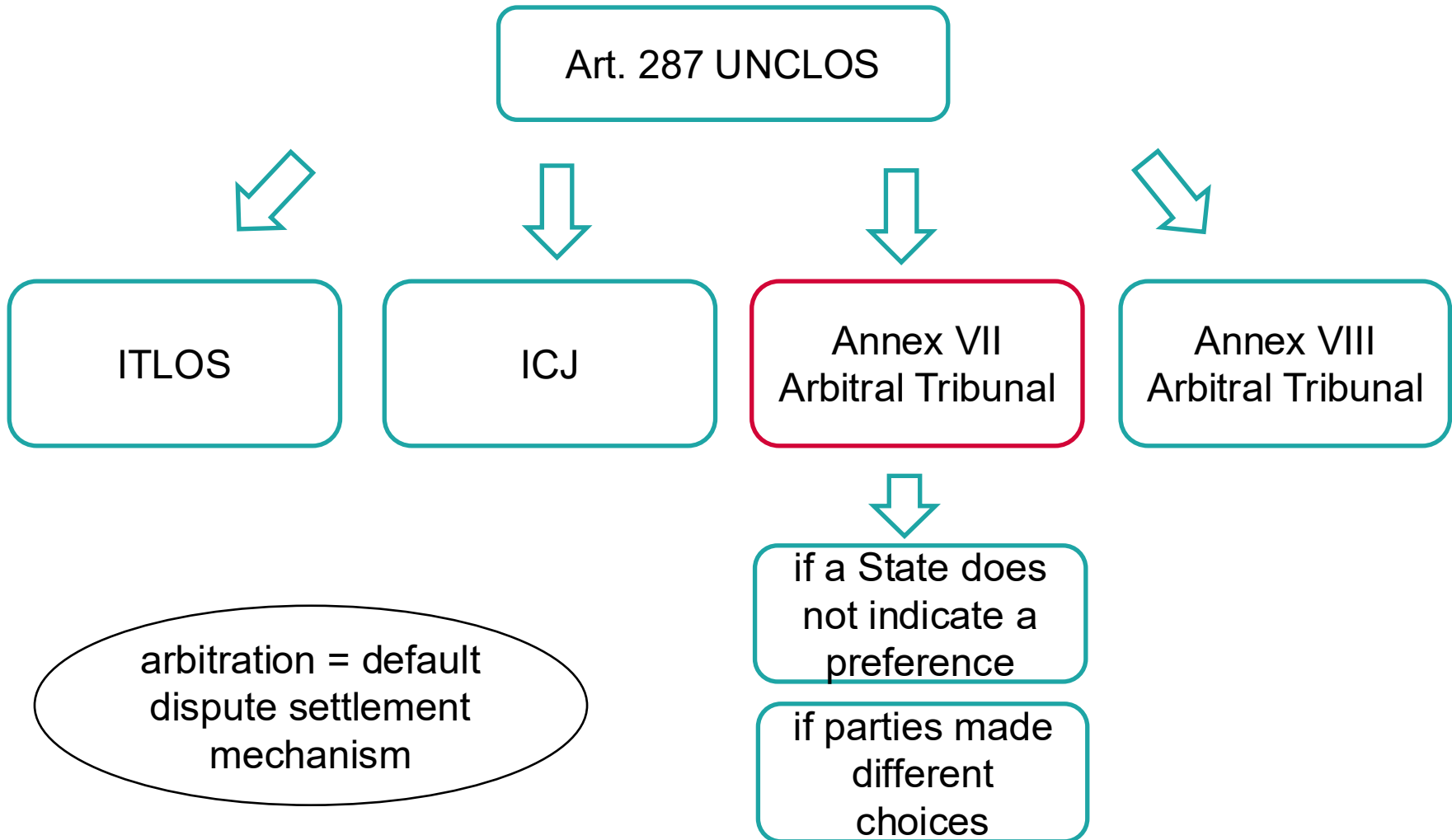


Choice through written declaration

- when signing, ratifying, acceding UNCLOS or later
- out of 171 UNCLOS parties, 56 made a choice, 115 did not make a choice
- 11 states opted for Annex VII arbitration
- **What about states not making a choice?**
- **What if differing choices?**

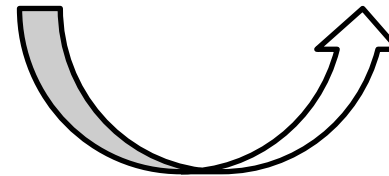
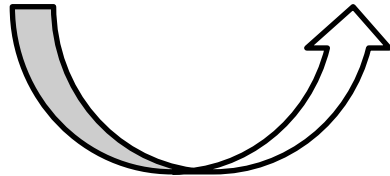
Four different fora for UNCLOS disputes

States can choose – “cafeteria approach”



Four different fora for UNCLOS disputes

Choice illustrated based on “The M/T San Padre Pio” case



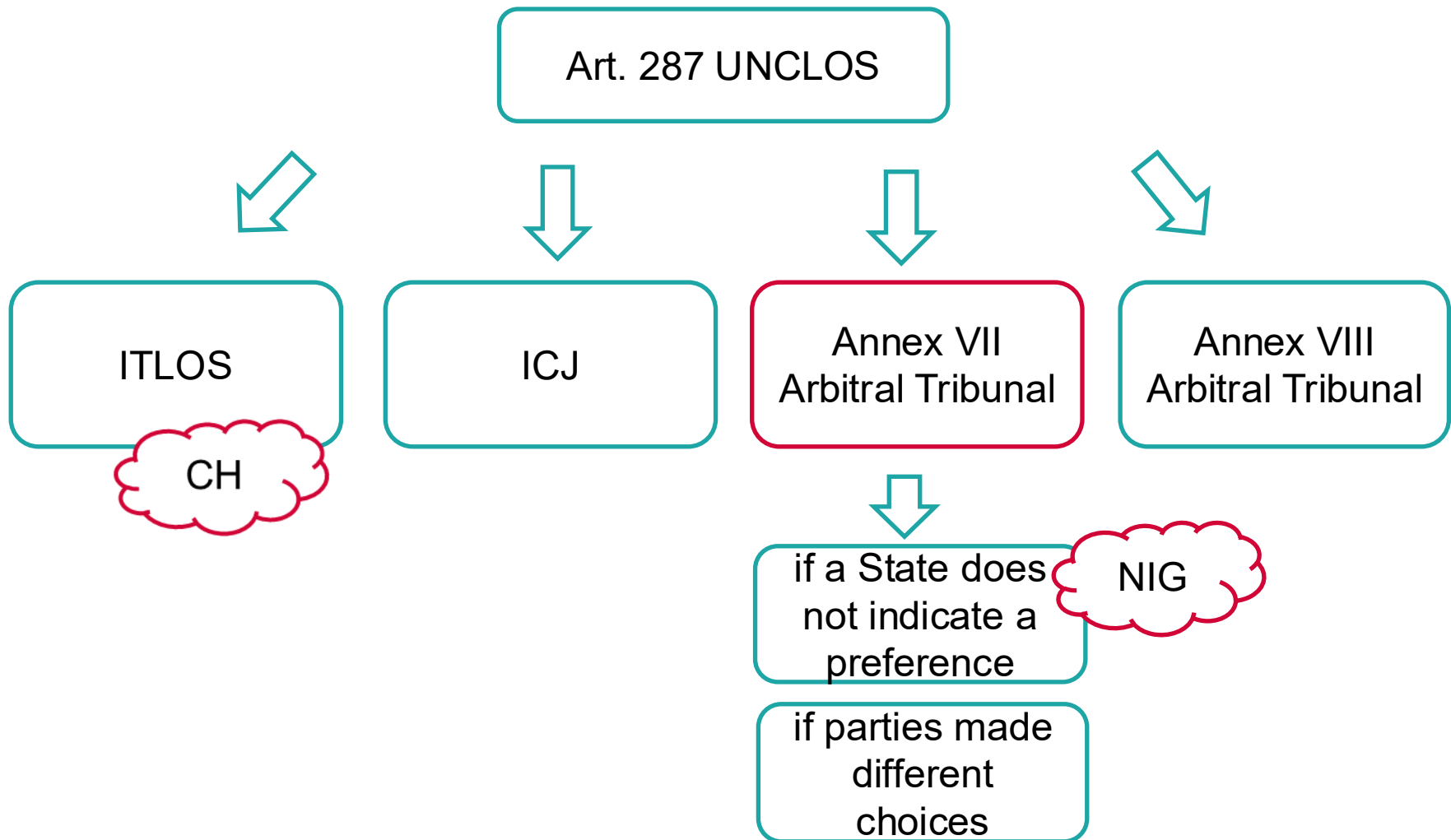
CH: art 58(1) UNCLOS
freedom of navigation



NIG: art 56(1) UNCLOS
coastal state's sovereign rights
re exploitation of non-living
resources

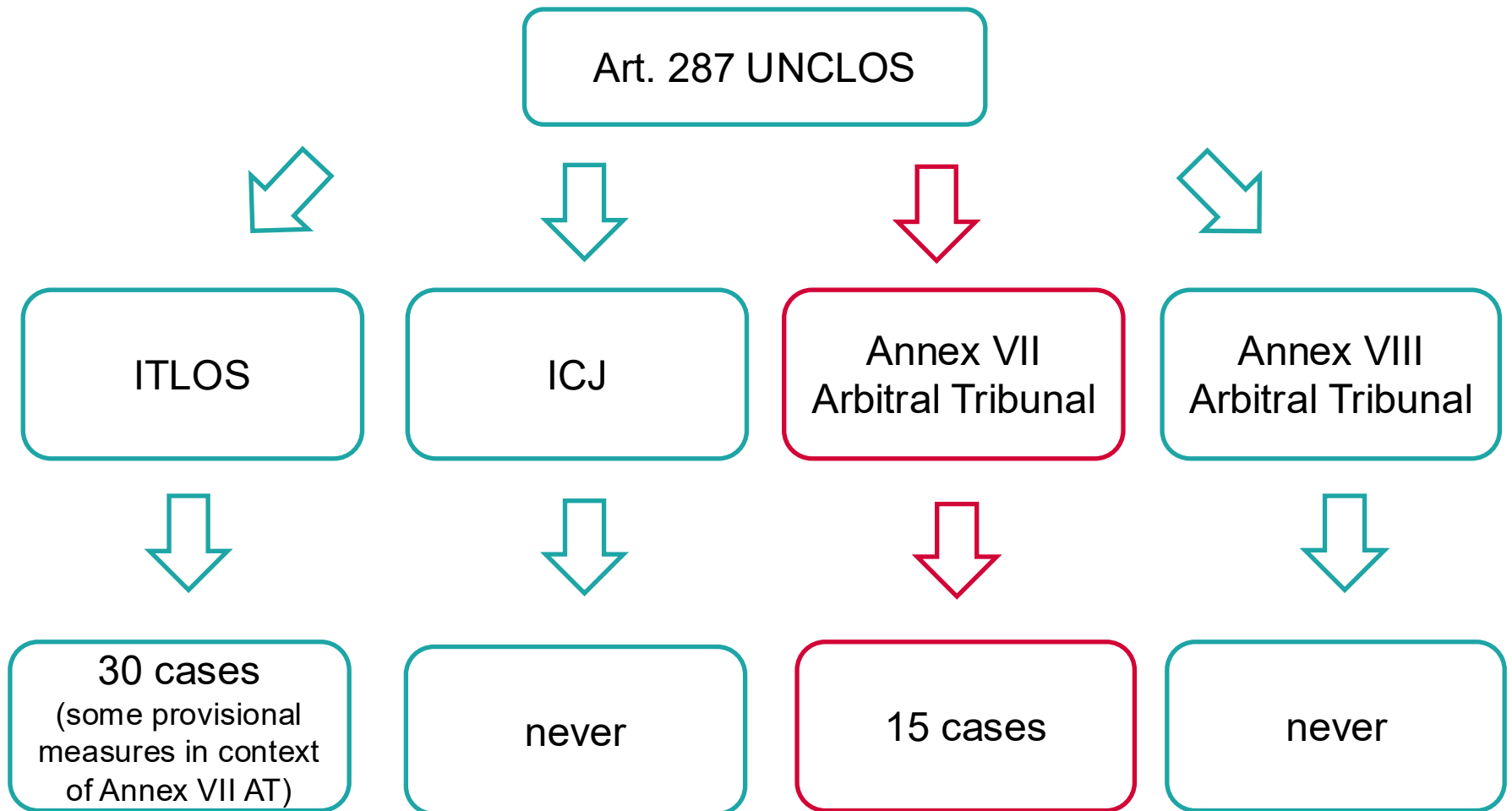
Four different fora for UNCLOS disputes

Choice illustrated based on “The M/T San Padre Pio” case



Four different fora for UNCLOS disputes

Which is the most popular forum?

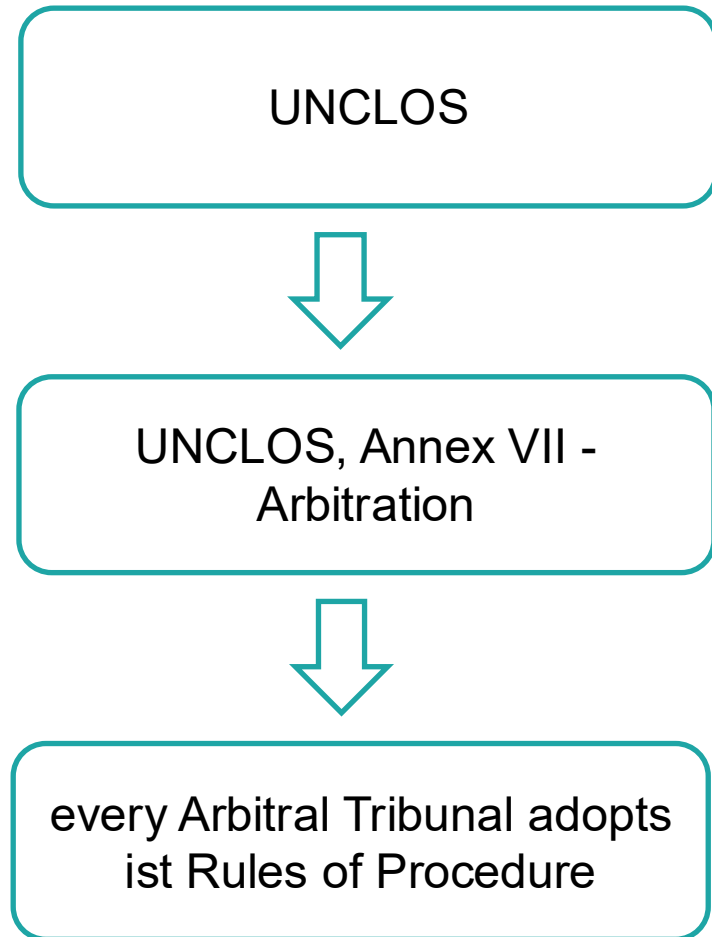


UNCLOS dispute settlement mechanism

Where is Annex VII arbitration regulated?

UNCLOS dispute settlement mechanism

Where is arbitration regulated?



Arbitration agreement and consent

Compulsory nature of UNCLOS DSM

Arbitration agreement and consent

States always need to consent to dispute settlement

“It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States (...) to arbitration, or to any kind of pacific settlement.”

PCIJ, Status of Eastern Carelia (Advisory Opinion) PCIJ Rep Series B No 5, 27

Consent can be given at different moments

- after the dispute arose (*compromis*)
- before the disputes arise → UNCLOS → for all future UNCLOS disputes

Arbitration agreement and consent

By becoming a party to UNCLOS states consent to DSM

By becoming a party to the UNCLOS, the State or IO provides its **advance consent** to arbitration or adjudication for UNCLOS disputes.

Any party to a dispute **may unilaterally institute** dispute settlement proceedings. No need to secure agreement of other party; it is obliged to submit to respective procedure.

The United Nations Convention on the Law of the Sea of 10 December 1982	
171.	Kyrgyzstan (20 September 2025)
170.	San Marino (19 July 2024)
169.	Rwanda (18 May 2023)
168.	Azerbaijan (16 June 2016)
167.	State of Palestine (2 January 2015)
166.	Niger (7 August 2013)
165.	Timor-Leste (8 January 2013)

Arbitration agreement and consent

UNCLOS dispute settlement mechanism is compulsory, but...



non-appearance
of respondent

- *The Arctic Sunrise Arbitration* (Netherlands v Russia) PCA Case no 2014-02
- *The South China Sea Arbitration* (Philippines v China) PCA Case no 2013-19

Arbitration agreement and consent

UNCLOS dispute settlement mechanism is compulsory, but...

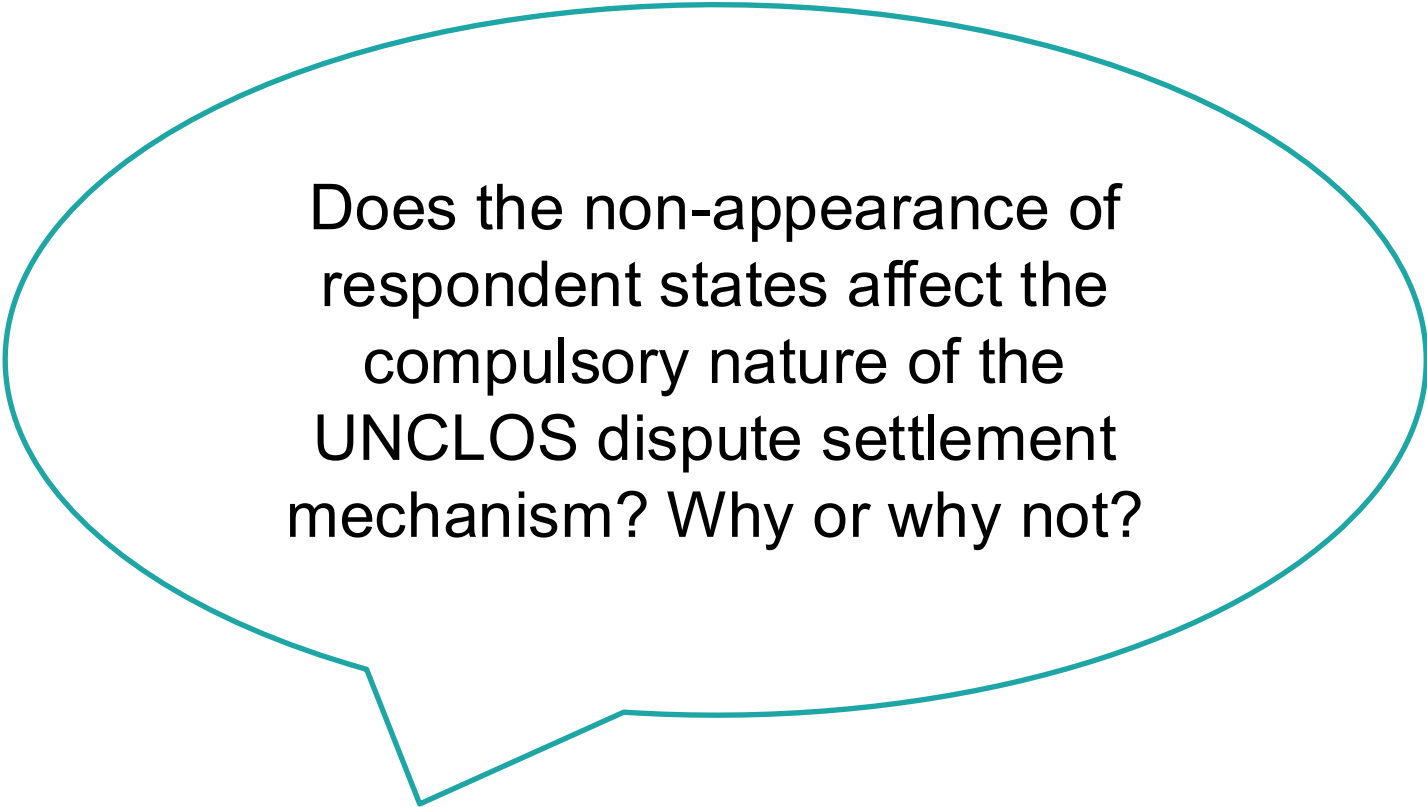
Annex VII of the UNCLOS:

Article 9
Default of appearance

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Arbitration agreement and consent

UNCLOS dispute settlement mechanism is compulsory, but...



Does the non-appearance of respondent states affect the compulsory nature of the UNCLOS dispute settlement mechanism? Why or why not?

Jurisdiction

Power of the tribunal to adjudicate a case

Jurisdiction

Subject matter jurisdiction

Any dispute concerning the interpretation and application of UNCLOS

- art 288(1) UNCLOS
- dispute must relate to provision of UNCLOS
- UNCLOS does not cover all sea-related disputes
- questions ancillary to the dispute?
 - views are split
 - e.g. *The M/V Saiga* case – use of force
- mixed disputes
 - dispute not exclusively concerning UNCLOS
 - e.g. involving a territorial sovereignty aspect
 - rights of coastal state – who is the coastal state?
 - pending case UE v RUS, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait*, PCA Case no 2017-06

Jurisdiction

Taking out disputes from subject matter jurisdiction

Limitations

- art 297 UNCLOS
- automatic
- certain subject-matter were removed from compulsory DSM
- coastal state rights and jurisdiction in EEZ and on continental shelf

Exceptions

- art 298 UNCLOS
- optional, must be declared by a state
- disputes touching upon important interest of states
- e.g. security, boundaries, offshore resources

Why taking out subject-matters from compulsory DSM?

Jurisdiction

Challenges to jurisdiction and bifurcation

Objections to jurisdiction

- call into question power of Annex VII tribunal to deal with a case
- can relate to different aspects
- e.g. subject matter jurisdiction

Kompetenz-Kompetenz

- art 288(4) UNCLOS
- dispute regarding jurisdiction: arbitral tribunal has competence to decide
- at request of parties only or *proprio motu*?

Bifurcation

- challenges to jurisdiction: address with merits or in preliminary phase?
- if jurisdiction first and merits proceedings suspended = bifurcation
- **Does bifurcation enhance procedural efficiency?**

Arbitrators

Who are they? How are they appointed?

Arbitrators

Who can become an Annex VII arbitrator?

List

- art 2(1) Annex VII
- list of arbitrators shall be drawn up and maintained by UN SG
- every UNCLOS state party can nominate up to 4 people
- people remain on list until state withdraws nomination

Background and requirements

- professional expertise
 - “experienced in maritime affairs”
 - legal qualifications not specifically required
- moral requirements: “highest reputation for fairness, competence and integrity”
- nationality is not a requirement

Arbitrators

Appointment

List

- art 3 Annex VII
- 5 arbitrators, unless parties agree otherwise
- 1st and 2nd arbitrator
 - party instituting proceedings appoints 1st arbitrator
 - other party appoints 2nd arbitrator (30 days)
 - shall be chosen preferably (!) from the list
 - if not: ITLOS President appoints
- 3rd, 4th and 5th arbitrator
 - shall be appointed by agreement by parties
 - shall be chosen preferably (!) from the list
 - if not: ITLOS President appoints
- ITLOS President: must choose from the list, different nationalities, no national
- in 9 out of 15 Annex VII cases appointment by ITLOS President

Arbitrators

Who has been an Annex VII arbitrator?

By the end of 2025, 80 Annex VII arbitrators have been appointed:
How many females acted as arbitrators?

2 females

- one party appointed
- one appointed by ITLOS judge

Arbitrators

Who are the ITLOS judges?



ITLOS:
5 female judges out
of 21 judges

Arbitrators

Who are the ITLOS Judges ad hoc?

First female ITLOS Judge ad hoc appointed

by The Editorial Team — July 18, 2019 in Diversity in shipping



Credit: HRAS

1 female
Judge ad hoc



Human Rights at Sea informed that Prof. Dr. Anna Petrig, Professor of International Law at the University of Basel, Human Rights at Sea Advisory Board Member, and co-author of the emerging Geneva Declaration on Human Rights at Sea, was appointed as a judge ad hoc at the International Tribunal for the Law of the Sea (ITLOS) in Hamburg for the San Padre Pio case.

Arbitrators

Who has been an Annex VII arbitrator?

Repeat appointments

By the end of 2025, 80 Annex VII arbitrator appointments were made:
How many individuals did this involve?

48 individuals

- 29 appointed once
- 1 arbitrator appointed 6 times

Arbitrators

Who has been an Annex VII arbitrator?

Serving international judges

By the end of 2025, 48 individuals have been appointed as Annex VII arbitrator:
How many were present/past ITLOS or ICJ judges?

- 15 past/present ITLOS judges
- 8 past/present ICJ judges

ITLOS in the context of Annex VII AT

Informal and formal functions

The ITLOS in the context of Annex VII arbitrations

Various roles and functions

Informal function

- “cafeteria approach” – four different fora deciding UNCLOS disputes
- fear of fragmentation
- but rather cross-fertilization
- Annex VII arbitral tribunal refer to ITLOS case-law

Formal function

- ITLOS President acts as appointing authority
- provisional measures pending the constitution of the arbitral tribunal

The ITLOS in the context of Annex VII arbitrations

Provisional measures

Provisional measures

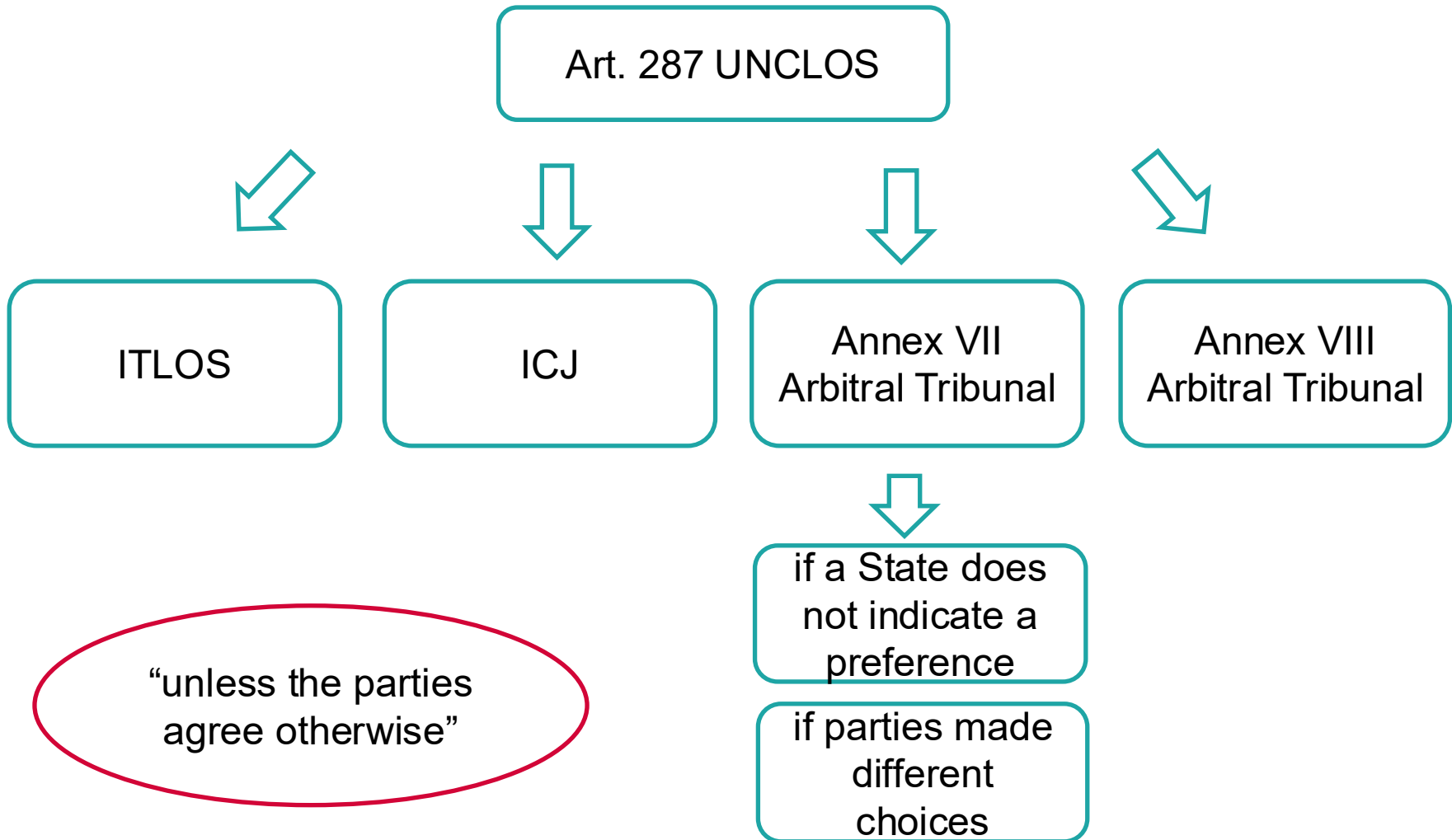
- function
 - preserve rights of parties or
 - prevent serious harm to marine environment (!)
 - pending the final decision of the case
- e.g. *M/T San Padre Pio* case
 - arrest of ship and crew
 - piracy attack against detained ship
 - request for provisional measures by CH
 - release of crew – financial security
- need for provisional measures may arise before arbitral tribunal is constituted
 - may takes months to constitute arbitral tribunal
 - ITLOS takes on this role → art 290(5) UNCLOS

Transfer of proceedings to ITLOS

Not a rare occurrence in practice!

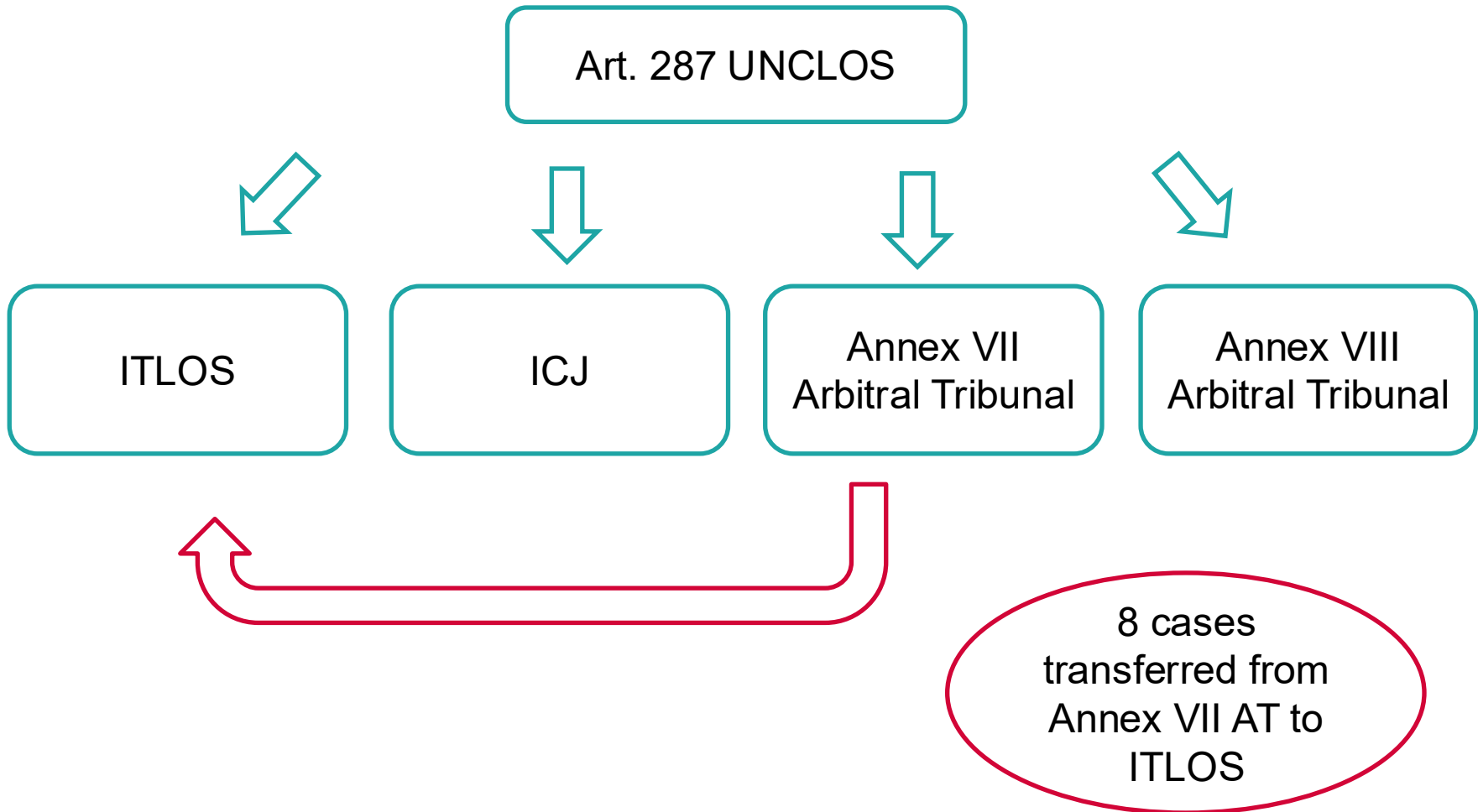
Transfer of proceedings from Annex VII to ITLOS

Parties can freely agree on how to settle their dispute



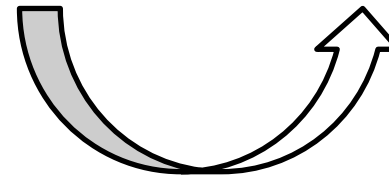
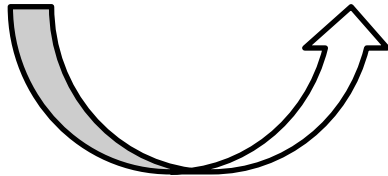
Transfer of proceedings from Annex VII to ITLOS

Parties can freely agree on how to settle their dispute



Transfer of proceedings from Annex VII to ITLOS

Case study: *The M/T “San Padre Pio” case (CH v NIG)*



CH: Art. 58(1) LOSC
freedom of navigation



NIG: Art. 56(1) LOSC
coastal state's sovereign rights
re exploitation of non-living
resources

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)



Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

**Negotiations not leading to result:
institution of arbitral proceeding by CH (flag State) against NIG**
6 May 2019

3. Switzerland submitted the dispute to arbitration under Annex VII of UNCLOS by a Notification and Statement of Claim, conveyed to Nigeria by diplomatic Note dated 6 May 2019 (**‘Notification’**) and transmitted to Nigeria on that day. A copy of the Notification is annexed to this Request for the prescription of provisional measures (**‘Request’**).¹

Source: “www.itlos.org/fileadmin/itlos/documents/cases/27/published/C27_Request_Sw.pdf”

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

**Annex VII
arbitration
proceedings
initiated**

negotiations

arrested



Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

**Request for provisional measures by CH before ITLOS (court):
in application of Art. 290(5) UNCLOS**

21 May 2019

Article 290 *Provisional measures*

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

**Annex VII
arbitration
proceedings
initiated**

provisional
measures
ITLOS

negotiations

arrested



Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

Published on 6 July 2019

Nigeria ordered to release the San Padre Pio, its cargo and crew

Bern, 6.7.2019 - In an order delivered today, the International Tribunal for the Law of the Sea in Hamburg has ruled that the San Padre Pio, a vessel flying the Swiss flag, and its crew and cargo must be released. Switzerland welcomes this decision. Nigeria has been holding the San Padre Pio, with its crew and cargo, for more than 17 months. The order largely upholds the request that Switzerland submitted to the tribunal.

www.news.admin.ch/en/nsb?id=75742

against a financial
security of USD 14
Million

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

Merits case still to be decided

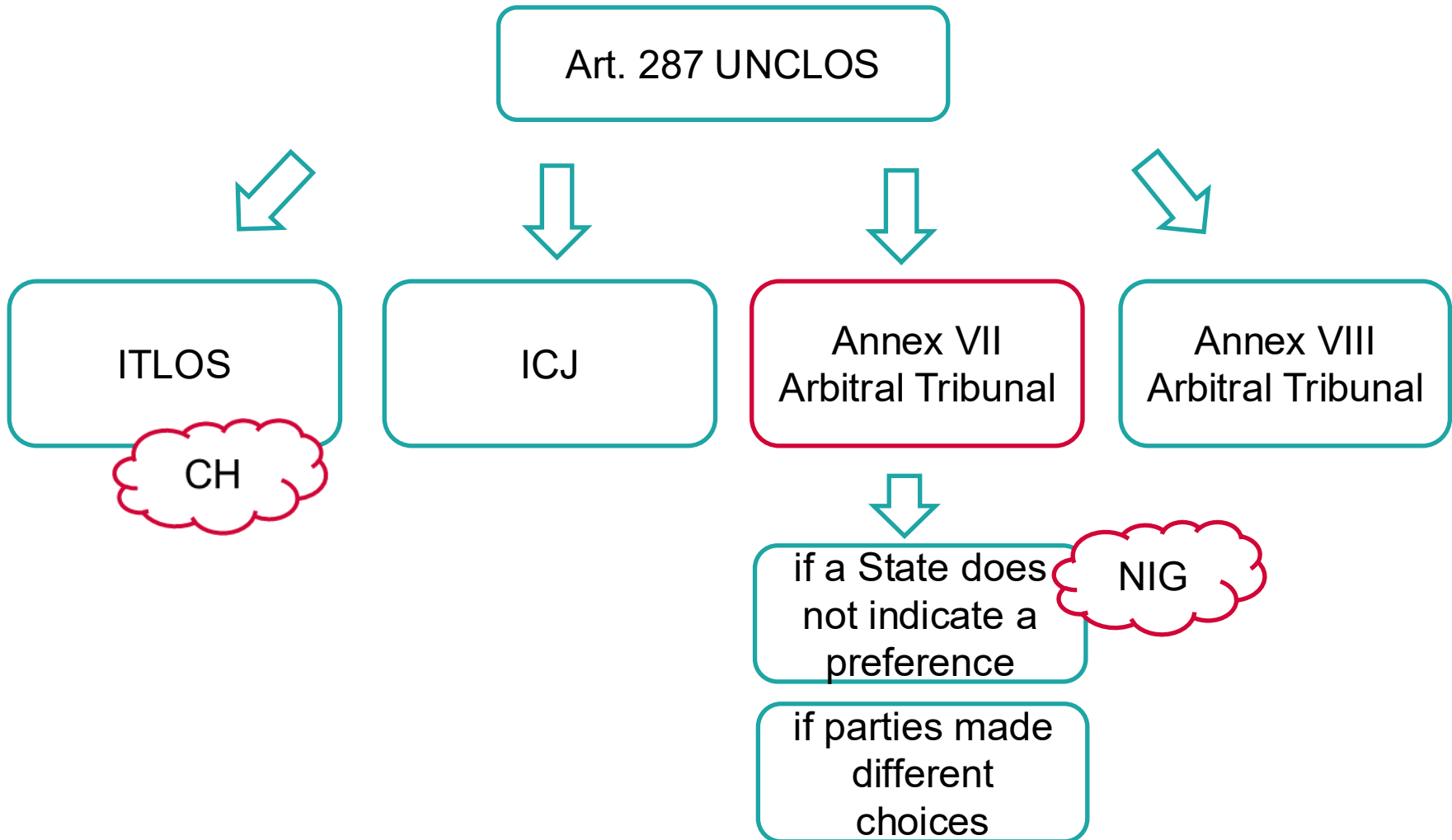
Arbitration pending, but parties agree to submit dispute to ITLOS (court)

21 December 2019



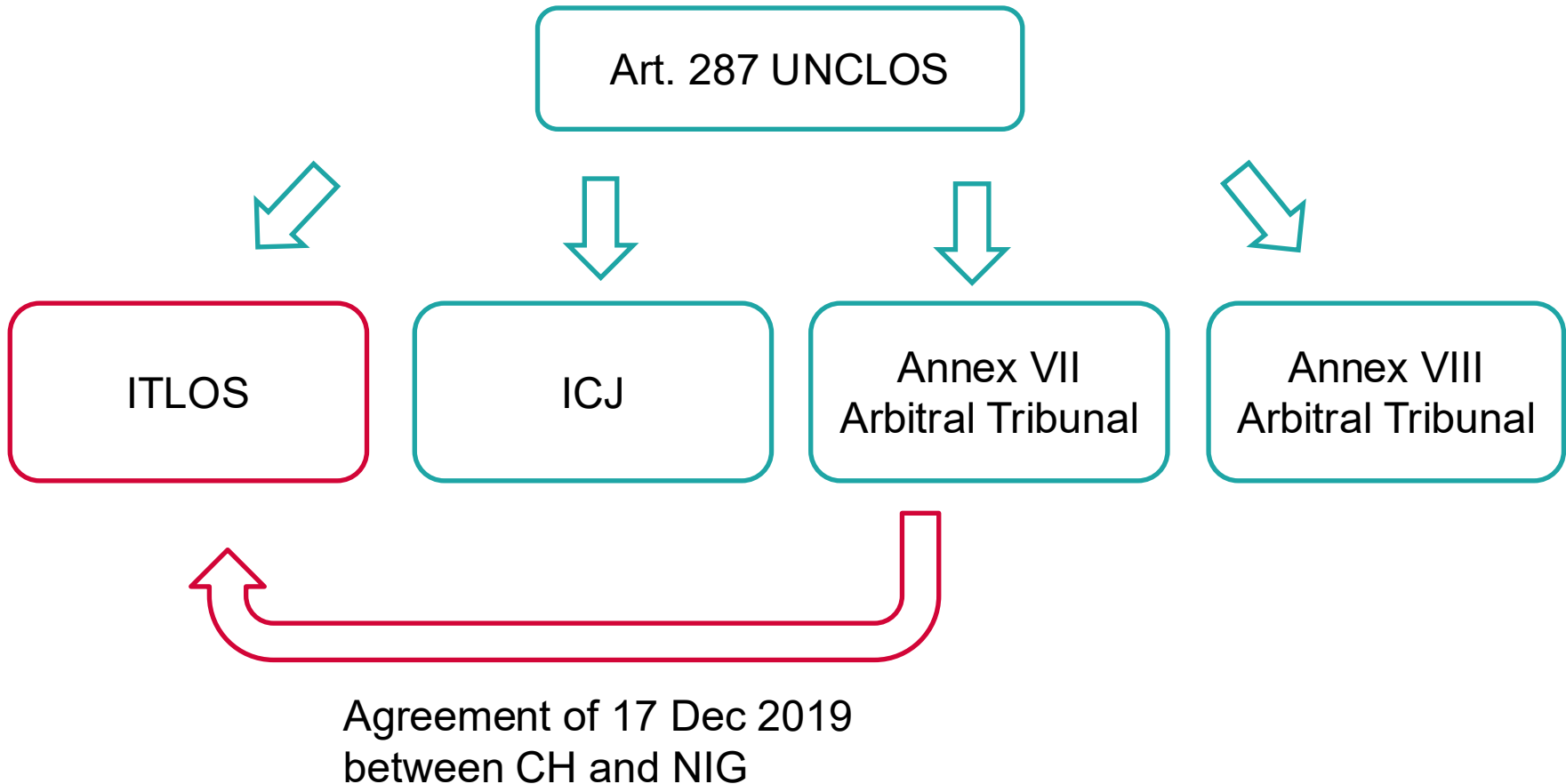
Transfer of proceedings from Annex VII to ITLOS

Case study: *The M/T “San Padre Pio” case (CH v NIG)*



Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)



ITLOS/Press 298
17 December 2019



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

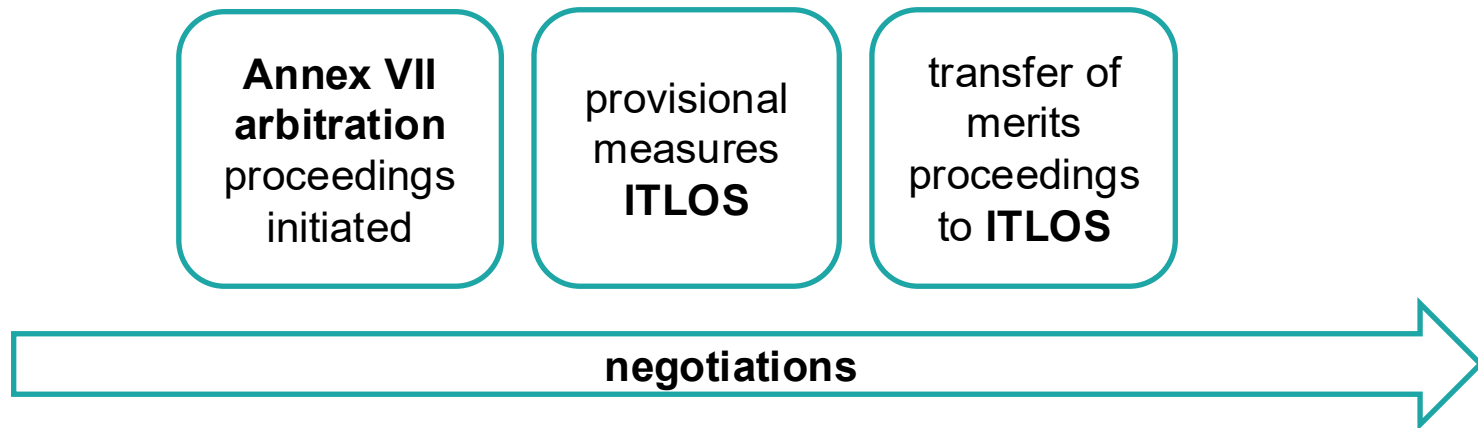
Press Release

**THE SWISS CONFEDERATION AND THE FEDERAL REPUBLIC OF NIGERIA
TRANSFER THEIR DISPUTE
CONCERNING THE *M/T “SAN PADRE PIO”* TO THE TRIBUNAL**

On 17 December 2019, the Swiss Confederation and the Federal Republic of Nigeria transmitted a special agreement and notification to the International Tribunal for the Law of the Sea (“the Tribunal”) to submit to the Tribunal their dispute concerning the arrest and detention of the *M/T “San Padre Pio”*, its crew and cargo. The *M/T “San Padre Pio”* is a motor tanker flying the flag of Switzerland, which was arrested by Nigerian authorities while it was allegedly engaged in ship-to-ship transfers of gasoil in Nigeria’s exclusive economic zone.

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)



Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

While merits case is pending, negotiations continue
Parties ask to postpone hearings at ITLOS

Published on 20 May 2021

Switzerland and Nigeria sign an agreement for the release of the vessel San Padre Pio

Bern, 20.5.2021 - The FDFA and the Federal Ministry of Justice of Nigeria have signed an agreement under which Nigeria will immediately release the ship San Padre Pio. The vessel, which flies the Swiss flag, was detained in January 2018 in Nigeria's exclusive economic zone.

Transfer of proceedings from Annex VII to ITLOS

Case study: The M/T “San Padre Pio” case (CH v NIG)

**Annex VII
arbitration
proceedings
initiated**

provisional
measures
ITLOS

transfer of
merits
proceedings
to **ITLOS**

negotiations

arrested



released



Transfer of proceedings from Annex VII to ITLOS

Reasons?

Role of appointing authority

- in many cases, ITLOS president acts as appointing authority
- possibility to explain advantages of ITLOS
- consultations with parties are not public (we are guessing...)

Potential benefits of litigating case before ITLOS

- for free
- fast
- usually pre-defined bench (21 judges), but ...
 - possibility of transferring case to a “special chamber”
 - composition is determined by ITLOS with approval of the parties
 - “choose your judges”
 - e.g. turn your nominated arbitrators into ITLOS Judges ad hoc
- more predictable outcome?

Combination, linkages, interaction between means

Case study: The M/T “San Padre Pio” case (CH v NIG)

What do transfers from Annex VII arbitration to ITLOS tell you about the pros and cons of arbitration and judicial settlement under UNCLOS? Is arbitration really cheaper, faster and the only possibility to “choose your judges”? Is the distinction between arbitration and judicial settlement less sharp in the UNCLOS than elsewhere?

Looking forward to reading your Reflective Journal...



University
of Basel

Thank you
for your attention!

Contact
anna.petrig@unibas.ch